IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 68 of 2002

Between:

C. Nanda Kumar, S/o. late C. Lakshman Rao,

Occ: Business, R/o. 'Kamalam'

9-1-86, St. John's Road, Secunderabad.

..... PETITIONER

AND

1. Bharat Petroleum Corporation Ltd.,

   Rep. by its Managing Director, Bharat Bhavan, 4&6 Currimbhoy Road, Ballard Estate, Post Box No.688,

   Mumbai – 400 001.

2. The Secretary,

   Ministry of Petroleum, Government of India,

   New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS, declaring; (i) Sections 5(2) and 7(3) of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 as null and void; (ii) or in the alternative to hold that Sections 5(2) and 7(3) of the said Act in the light of the Scheme of the Act

preserve only the right of renewal if it existed in the original Lease and are not intended for creating of new jural Relationship of Landlord and Tenant beyond the expiry of term in the absence of Contract; (iii) to declare that the refusal to deliver vacant possession after the expiry of the Lease is illegal and tantamounts to deprivation of property without authority of law; (iv) to direct the Respondents to deliver vacant possession of the premises (old) Municipal No.28, Sarojini Devi Road, Secunderabad (present) Municipal No.9-1-85, Sarojini Devi Road, Secunderabad with damages for one and occupation from 01.10.2001 till delivery of possession.

Counsel for the Petitioner:MR.P.M.GOPAL RAO

Counsel for the Respondent No.1: Mr. O. Manohar Reddy

Counsel for the Respondent No.2: SMT.A.P.LAKSHMI, Addl. S.C for C.G.

The Court made the following ORDER:

ORDER: (Per Sri B.Sudershan Reddy, J)

The petitioner's father, late C. Lakshman Rao, being the owner of 18400 Square feet of vacant land i.e., to say 2034 Square yards of site bearing Municipal No.9-1-85, Sarojini Devi Road, Secunderabad, entered into a lease with Burmah Shell Oil Storage and Distributing Company of India Limited and registered lease deed dated 23.11.1962 was accordingly executed by and between the parties. The lease was for a period of 40 years commencing from 01.10.1961. It is unnecessary to refer in detail the terms and conditions of the lease deed. Suffice it to notice that the lease deed provided for a monthly rent of Rs.350/- for the first 20 years and at the rate of Rs.500/- per month thereafter till the next 10 years and a monthly rent of Rs.600/- for the last 10 years of the term.

The case of the petitioner is that the lease deed provided no-renewal. On the other hand, it provided a covenant that the lessee shall yield up the demised premises at the expiry of the said period. It provided for a grace period of 30 days thereafter for the tenant to remove its structure in the land. The petitioner's father died on 03.12.1986 and the petitioner succeeded the lease. The lease admittedly expired on

30.09.2001.

Be it noted, as per the provisions of the Burma Shell (Acquisition of Undertakings in India) Act, 1976 (Central Act 2 of 1976) (for short 'the Act'), the lease hold rights vested with the second respondent with effect from 24.01.1976 and re-vested in Bharat Petroleum Corporation Limited, a Government Company, which is set up by the second respondent to carry on its business. The lease hold rights thus devolved upon the respondents by virtue of the statute.

The fact remains that the first respondent did not vacate the premises in question even after the expiry of the period of the lease. On the other hand, it issued a notice dated 17.05.2001 expressing its desire to renew the lease for a further period of 40 years commencing from 01.10.2001 on the same terms and conditions on which the original lessee held the same immediately before the appointed date i.e., to say on 24.01.1976. The claim of the first respondent is obviously based on Section 7 of the Act. The writ petitioner expressed his unwillingness to renew the lease, since there was no legal obligation to do so.

That some correspondence took place between the parties the details whereof need not be noticed.

The first respondent-Corporation vide its letter
dated 17.05.2001 appears to have raised a contention that under Section 5(2) of the Act, the lease automatically stands renewed by operation of law, on the same terms without the consent of the owner. The petitioner replied on 10.07.2001 that in the absence of renewal clause there cannot be unilateral renewal. A lawyer's notice dated 01.11.2001 was also issued to which, the first respondent issued reply dated 01.11.2001 asserting its right for renewal of the lease even in the absence of an agreement or a clause providing for renewal and that they will resist the proceedings for their eviction.

It is under those circumstances, the petitioner filed the present writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India *inter alia* challenging the constitutional validity of Sections 5(2) and 7(3) of the Act, which confer right of renewal of lease to the statutory assignees of the lease, like the first respondent-Corporation.

Be it as it may, after filing of this writ petition, the first respondent-Corporation filed

O.S.No.621 of 2003 on the file of the

learned 1st Junior Civil Judge, City Civil Court, Secunderabad, praying the Court to pass a judgment and decree in the following manner:

> "a) for specific performance directing the defendant to execute and register a lease deed in renewal in favour of the Plaintiff for a term of 40 years from 01.10.2001 on the same terms and conditions as are contained in the lease deed dated 08.01.1963 in respect of the schedule land;
>
> b. in case the defendant fails to execute and register such a lease deed, this Hon'ble Court may be pleased to execute and register such lease deed on behalf of the defendant and in favour of the plaintiff;
>
> c. for costs of the suit and
>
> d. for any other relief or reliefs as this Hon'ble Court may com fit and proper."

It is also brought to our notice that the petitioner herein field a detailed written statement and counter claim *inter alia* opposing the relief and also with a prayer to evict the first respondent from the site in question.

Since the first respondent as well as the petitioner have already availed the remedy that is available to them, it is not a fit case requiring this Court to go into the constitutional validity of the provisions of the Act and grant any relief in this writ petition. Interest of justice would be met by directing the learned 1st Junior Civil Judge, City Civil Court, Secunderabad, to dispose of the suit as expeditiously as possible.

We are told that the learned 1st Junior Civil Judge, City Civil Court, Secunderabad, did not frame appropriate issues by duly taking into consideration the objections raised by the petitioner herein in the written statement and as well as the counter claim.

There has to be a full-fledged trial with reference to the contentions raised by both the parties. In the circumstances, the learned Judge is directed to frame proper and appropriate issues by duly taking the written statement and counter claim into

consideration and dispose of the suit in accordance with law. No averment or portion of any contention raised in the written statement and the counter claim can be eschewed or ignored by the learned Judge while framing the issues. That if the situation so requires, the learned trial Judge shall recast the issues and put the parties to trial.

Having regard to the facts and circumstances, we direct the learned Trial Judge to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

Liberty is granted to the petitioner to raise the issues relating to constitutional validity of the provisions of the Act, as and when such a situation arises. We make it clear that we have not expressed any opinion on any of the contentions raised by the petitioner in the writ petition.

The writ petition is accordingly disposed of without any order as to costs.

_____

B. SUDERSHAN REDDY,J

_____

K.C. BHANU,J

Date: 28.09.2004

va/ks

Note: Dispatch copy of the order by day after tomorrow.

B/o

Va/ks

To

1. Bharat Petroleum Corporation Ltd.,

   Rep. by its Managing Director, Bharat Bhavan, 4&6 Currimbhoy Road, Ballard Estate, Post Box No.688,

Mumbai – 400 001.

2. The Secretary,

Ministry of Petroleum, Government of India,

New Delhi.

3. Two CD Copies